

1 THE HONORABLE JOHN C. COUGHENOUR
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 READY SEAFOOD CO.,

11 v.
12 Plaintiff,

13 WESTLAKE SEAFOOD, LLC,

14 Defendant.

CASE NO. C20-5846-JCC

ORDER

15 This matter comes before the Court on Plaintiff Ready Seafood Co.'s motion for default
16 judgment (Dkt. No. 10). Having thoroughly considered the motion and the relevant record, the
17 Court finds oral argument unnecessary and hereby DENIES the motion for the reasons explained
18 herein.

19 **I. BACKGROUND**

20 On August 21, 2020, Plaintiff Ready Seafood Co. filed a complaint alleging that it sold
21 over \$90,000 dollars of lobster to Defendant Westlake Seafood LLC, but Westlake paid only
22 \$5,000 of the balance. (*See* Dkt. No. 1 at 2.) Ready Seafood served Westlake's registered agent
23 with the summons and complaint by personal service on August 27, 2020. (*See* Dkt. No. 4.)
24 Therefore, Westlake's deadline to respond to the complaint was September 17, 2020. Fed. R.
25 Civ. P. 12(a)(1)(A)(i).

26 Westlake's registered agent, who does not appear to be a lawyer, mailed an answer

1 denying most of the allegations in the complaint to Ready Seafood's attorney on September 13,
2 2020. (See Dkt. Nos. 7 at 7–9, 10 at 3.) Westlake has not formally appeared in this matter—
3 through counsel or otherwise—and has not filed the answer with the Court. The Clerk entered
4 default on September 28, 2020. (See Dkt. Nos. 5, 8.) Later that day, Ready Seafood served the
5 order of default on Westlake by mail. (Dkt. No. 9.)

6 Ready Seafood moved for a default judgment 30 days later and served Westlake with the
7 motion and supporting documents by mail that same day. (See Dkt. Nos. 10 at 11, 11 at 3, 12 at
8 4.) Westlake did not appear or respond. A few weeks later, the Court ordered Ready Seafood to
9 show cause why the Court should not dismiss this matter for lack of subject-matter jurisdiction
10 by filing an amended complaint that properly alleged subject-matter jurisdiction. (See Dkt. No.
11 13.) Ready Seafood filed an amended complaint that cured the deficiencies the Court identified
12 the next day. (See Dkt. No. 14.) Westlake still has not appeared or responded to any of Ready
13 Seafood's filings.

14 **II. LEGAL STANDARD**

15 The Court may enter a default judgment at its discretion. *Aldabe v. Aldabe*, 616 F.2d
16 1089, 1092 (9th Cir. 1980). When determining whether to enter a default judgment, the Court
17 may consider:

18 (1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff's
19 substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at
20 stake in the action; (5) the possibility of a dispute concerning material facts; (6)
21 whether the default was due to excusable neglect, and (7) the strong policy
underlying the Federal Rules of Civil Procedure favoring decisions on the merits.

22 *Eitel v. McCool*, 782 F.2d 1470, 1471–72 (9th Cir. 1986). “[U]pon default the factual allegations
23 of the complaint, except those relating to the amount of damages, will be taken as true.” *Geddes*
24 *v. United Fin. Grp.*, 559 F.2d 557, 560 (9th Cir. 1977).

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1 **III. DISCUSSION**

2 **A. Merits of Plaintiff's Claim, Sufficiency of the Complaint, and Possibility of a**
3 **Dispute of Material Fact**

4 The three *Eitel* factors related to the merits of Ready Seafood's claims all weigh in favor
5 of entering a default judgment here.¹ After a party defaults, the Court accepts "the factual
6 allegations of the complaint, except those relating to the amount of damages, . . . as true."
7 *Geddes*, 559 F.2d at 560. Therefore, if the factual allegations in Ready Seafood's complaint,
8 accepted as true, show that Westlake "is liable for the misconduct alleged," then the complaint is
9 sufficient, Westlake is barred from disputing those factual allegations, and Ready Seafood has
10 established the merits of its claim. Fed. R. Civ. P. 8(a)(2); *Ashcroft v. Iqbal*, 556 U.S. 662, 678
11 (2009).

12 "[A]n account stated [is] 'a manifestation of assent by debtor and creditor to a stated sum
13 as an accurate computation of an amount due the creditor.'" *Sunnyside Valley Irr. Dist. v. Roza*
14 *Irr. Dist.*, 877 P.2d 1283, 1284 (Wash. 1994) (quoting Restatement (Second) of Contracts §
15 282(1)). "[I]t is an admission by each party of the facts asserted and a promise by the debtor to
16 pay the sum indicated." *Id.* The manifestation of assent need not be explicit and "may be implied
17 from the circumstances and acts of the parties." *Shaw v. Lobe*, 108 P. 450, 451 (Wash. 1910). "A
18 party's retention without objection for an unreasonably long time of a statement of account
19 rendered by the other party is a manifestation of assent." Restatement (Second) of Contracts §
20 282(1).

21 Ready Seafood alleges it sold over 15,000 pounds of lobster to Westlake on November
22 16, 2018 and November 19, 2018, but Westlake paid only \$5,000 of the \$90,570.09 price. (Dkt.
23 No. 14 at 2–8.) Ready Seafood further alleges that it "sent the November 23, 2018 invoice to
24 [Westlake]" in November 2018, "21 months" before Ready Seafood filed the original complaint

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26 ¹ The merits of Plaintiff's claims, the sufficiency of the complaint, and the possibility of a
dispute of material fact.

1 in this matter, and Westlake never disputed that it owes the amount of the invoice.² (Dkt. No. 1
2 at 3.) Therefore, the complaint alleges, Ready Seafood has established an account stated because
3 Westlake retained the invoice for an unreasonable amount of time and never objected. (Dkt. No.
4 14 at 3.) The Court agrees that these facts, accepted as true, suffice to establish an account stated.

5 For reasons that are unclear, Ready Seafood does not allege that it sent the other three
6 invoices to Westlake or how long Westlake retained them. Even so, it is reasonable to infer from
7 the allegations in the complaint that Ready Seafood sent the other three invoices to Westlake in
8 November 2018. *See Doe v. United States*, 419 F.3d 1062 (9th Cir. 2005) (In addition to treating
9 a plaintiff's factual allegations as true, the Court must "draw[] all reasonable inferences from the
10 complaint in [the plaintiff's] favor."). First, the complaint alleges that Westlake has not disputed
11 the amount due on any of the invoices. (See Dkt. No. 14 at 3.) The Court infers from that
12 allegation that Ready Seafood sent the other three invoices to Westlake. Otherwise, Westlake
13 would have no reason to dispute them, and its failure to do so would be irrelevant. Next, one
14 invoice contains a "printed" date that differs from the order date, which suggests that the
15 invoices were, in fact, printed. (Dkt. No. 14 at 6.) The Court infers that the purpose of printing
16 the invoices was to send them to Westlake. Ready Seafood's allegation that it sent the November
17 23, 2018 invoice to Westlake in November 2018—*i.e.*, within seven days of the "printed" date—
18 suggests that Ready Seafood generally sent the invoices shortly after printing them. (Dkt. No. 14
19 at 5–9 (showing remaining invoices were printed on November 19 and November 21).)
20 Therefore, accepting the allegations in the complaint as true and drawing all reasonable
21 inferences from those allegations in Ready Seafood's favor, the Court concludes that Ready
22 Seafood adequately pled its account stated claim. Because the Court concludes that Ready
23 Seafood stated a claim for account stated, it need not address Ready Seafood's claim for open
24 account, which is asserted only "in the alternative." (Dkt. No. 14 at 3.)

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26 ² Ready Seafood repeats this "21 months" allegation in the Amended Complaint that was filed
later but the Court understands that to be an error. (See Dkt. No. 14 at 3.)

1 **B. Remaining Factors**

2 All but one of the remaining factors weigh in favor of entering a default judgment. First,
3 Ready Seafood would be prejudiced if the Court were not to enter a default judgment because it
4 would be without a remedy. *See Microsoft Corp. v. Lopez*, 2009 WL 959219, slip op. at 2 (W.D.
5 Wash. 2009). Second, on this record, there is no evidence that Westlake's failure to appear is
6 justified by excusable neglect. It has been several months since Ready Seafood originally served
7 Westlake and Westlake still has not appeared. Third, the amount of money at stake is
8 proportional to the harm caused: it is the amount of the unpaid invoices and interest. Finally, the
9 general policy in favor of deciding cases on the merits always weighs against entering a default
10 judgment, but where, as here, the defendant has failed to appear despite notice and more than
11 adequate time to do so, it is unlikely that denying Ready Seafood's motion would facilitate
12 resolution on the merits.

13 **C. Damages**

14 Having concluded that Ready Seafood's allegations suffice to establish an account stated
15 and that a default judgment is warranted, the Court turns to its evidence of damages. "A default
16 judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings."
17 Fed. R. Civ. P. 54(c). A party seeking a default judgment must "provide a concise explanation of
18 how all amounts were calculated, and . . . support this explanation with evidence establishing the
19 entitlement to and amount of the principal claim, and, if applicable, any liquidated damages,
20 interest, attorney's fees, or other amounts sought." W.D. Wash. Local Civ. R. 55(b)(2)(A). The
21 Court may enter a default judgment for damages without a hearing if "the amount claimed is a
22 liquidated sum or capable of mathematical calculation." *Davis v. Fendler*, 650 F.2d 1154, 1162
23 (9th Cir. 1981).

24 Ready Seafood seeks \$85,570.09 in principal and 9% prejudgment interest. (Dkt. No. 14
25 at 4.) The company provided evidence that appears to substantiate its request for \$85,570.09 in
26 principal but its explanation of how it arrived at that total does not match the evidence it

1 submitted in support of its damages request. Further, Ready Seafood never explains why it is
2 entitled to 9% prejudgment interest or how the interest accrues. Therefore, the Court exercises its
3 discretion to DENY the motion for default judgment. The Court will give Ready Seafood one
4 final opportunity to amend the complaint and provide the relevant supporting evidence. If the
5 second amended complaint or motion are defective, the Court will enter a default judgment for
6 the amount it determines is appropriate based on the evidence before it.

7 Ready Seafood alleges in the complaint that the four invoices it sent to Westlake add up
8 to a total balance owed of \$90,570.09, Westlake paid \$5,000 in July 2020, and then failed to pay
9 the rest. (Dkt. No. 14 at 2–3.) Nolan Rusk, Ready Seafood’s Manager of Accounts Receivable,
10 submitted a declaration confirming that is what happened in which he explains that he
11 remembers the \$5,000 payment because it “was made in July 2020 in response to
12 correspondence [he] sent to Westlake Seafood.” (Dkt. No. 12 at 2.) Accordingly, counsel for
13 Ready Seafood calculated the prejudgment interest Westlake allegedly owes in two periods: the
14 first period applies the 9% interest rate to the full \$90,570.09 owed and the second period applies
15 the rate to only \$85,570.09 in principal.³ (See Dkt. Nos. 11 at 2, 11-1 at 6.).

16 The problem is that the documents Ready Seafood submitted to support its damages
17 calculation do not match its allegations. The four invoices Ready Seafood attached to the
18 complaint add up to a total balance of \$118,320, not \$90,570.09, and the “aged accounts
19 receivable detail” Mr. Rusk submitted with his declaration shows a \$32,749.91 payment. (See
20 Dkt. Nos. 12 at 2, 12-1 at 5.) Subtracting that payment from \$118,320 results in a total principal
21 balance of \$85,570.09, which matches Ready Seafood’s request but is inconsistent with its
22 allegations in the complaint and leaves the Court unable to calculate the interest Westlake
23 allegedly owes. This discrepancy leaves the Court with a choice: enter default judgment for
24 \$85,570.09 and deny Ready Seafood’s request for prejudgment interest or give Ready Seafood
25 one final opportunity to adequately support its request. Under the circumstances, although it will

26³ The Court cannot determine what the “9%” column means.

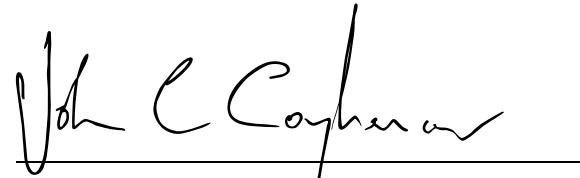
1 cause further delay, the Court concludes it is better to send these issues back to Ready Seafood,
2 particularly because the Court now has questions about the company's factual allegations.

3 **IV. CONCLUSION**

4 For the foregoing reasons, the Court DENIES Ready Seafood's motion for default
5 judgment and grants Ready Seafood leave to amend the complaint and submit additional
6 evidence, if necessary, to support its damages calculation. If Ready Seafood wishes for the Court
7 to award prejudgment interest, it must show that it is entitled to prejudgment interest and explain
8 how it arrived at the requested rate and how the interest accrues. If Ready Seafood prefers to
9 forego prejudgment interest and for the Court to enter default judgment now for only the
10 principal balance, Ready Seafood may file a notice on the docket. Regardless of what Ready
11 Seafood chooses, its amended or supplemental materials must be filed within 14 days of the date
12 of this order.

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14 DATED this 21st day of June 2021.

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John C. Coughenour
UNITED STATES DISTRICT JUDGE